IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 16138 of 2007(U)

RCRP.1/2007 OF SUB COURT, CHERTHALA,
RCP.17/1991 OF PRL.MUNSIFF COURT, CHERTHALA.
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PETITIONER:

SANTHAKUMAR, S/O.KARUNAKARAN,
PARIYARAVELIYIL, THANNEERMUKKOM MURI,
THANNEERMUKKOM VADAKKE VILLAGE.

BY ADV. SRI.B.KRISHNA MANI.

RESPONDENTS:
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1. **KARTHIKEYAN KARTHIKA,**
   VADAKKEVELIYIL HOUSE, THANNEERMUKKOM.
2. **SUMATHY, DO. DO.**
3. **DIVAKARAN, DO. DO.**
4. **RAMACHANDRAN, DO. DO.**
5. **PAVITHRAN, DO. DO.**
6. **RAMESAN, DO. DO.**
7. **KANCHANAVALLY AMMA, PARIYARAM**
   VELIYIL, OF DO. DO.
8. **RAJU, DO. DO.**
9. **MURALEEDHARAN, DO. DO.**

W.P.(C). NO. 16138/2007:

10. SASIKUMAR, DO. DO.

11. SOMAN, DO. DO.

12. PONNAMMA, DO. DO.

13. LEELA, DO. DO.

14. CHANDRIKA, DO. DO.

15. PURUSHOTHAMAN, VIJU BHAVAN,
THANNEERMUKKOM.

16. MANILAL, PARIYARAMVELIYIL,
THANNEERMUKKOM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

W.P.(C).No.16138 OF 2007

Dated 7th June, 2007

JUDGMENT

Koshy,J.

This writ petition is filed questioning the order of the execution court refusing to set aside the ex parte order passed. Order of eviction was passed against the petitioner under Section 11(2)(b) (for arrears of rent) and Section 11(4)(iv) (for reconstruction) of the Kerala Buildings (Lease and Rent Control) Act. The above order of eviction was affirmed by the appellate authority and this court in revision. It was contended by the petitioner that neither rent control court nor the appellate authority has passed any order with regard to re-entry of the tenants after reconstruction. This court while disposing of the revision application observed that those matters are not to be considered in a revision application and revision petitioners can approach the execution court for that purpose. But, the appellate authority itself has passed the order fixing the time for reconstruction and re-entry in the last paragraph of the judgment as follows:

> "In the result, the appeal fails and accordingly it is dismissed with costs. The appellants and respondents 2 to 10 are

> directed to put the respondents 11 to 16 in possession of the petition schedule building within two months. In the event the appellants deposited the rent of the building within 30 days, the order of eviction under Section 11(2)(b) would stand vacated. The respondents 11 to 16 are directed to reconstruct the building within 6 months after getting possession and put the appellants in possession of equivalent area, provided the arrears of rent is deposited within one month and they are prepared to pay the reasonable rent."

The other contention is that plan is not approved by the Panchayat. The execution court has considered that matter also and stated that approval of plan was not compulsory in that panchayath area. The rent control petition was filed as early as in 1991. Petitioner was successful to prolong the matter so far and as rightly stated in the impugned order, the present petition is filed to prevent landlord from enjoying the fruits of the order passed in his favour. His contention is that when the execution application (E.A) was posted, the petitioner was absent because another application with the same number of another year was also posted and there was mistake. It was correctly stated by the revisional court that petitioner cannot take advantage from the mistake he has committed and prevent the landlord from enjoying the fruits of the order

passed in his favour and also found that there is no basis in the revision petition on merits also. We see no ground to entertain this writ petition as there is no necessity for exercising extraordinary jurisdiction of this court under Article 226 or 227 of the Constitution of India in this matter.

The writ petition is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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